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IN THE

SUPREME COURT OF THE UNITED STATES

(Decided June 4, 1962)

No. 773

LEVERT H. TAYLOR, ET AL.,

versus

STATE OF LOUISIANA.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA.

PETITION FOR REHEARING ON BEHALF OF STATE OF LOUISIANA.

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GROUNDS FOR REHEARING.

This Court should have denied the application for the writ of certiorari in this matter, but having decided to grant such writ should have required this case to be set for argument and preparation of record before issuing any mandate herein.

In this matter, the State of Louisiana feels that the decision of this Honorable Court rendered on June 4, 1962 (without any oral argument or hearing or other advance notice and without any notice that a writ of certiorari had been granted) is contrary to law and contrary to the jurisprudence of this Honorable Court.

Primo, we respectfully submit that surely the errors made by this Court on questions of fact would not have been made if the respondent had been notified that a writ of certiorari had been granted and if respondent had been given an opportunity to designate portions of the testimony to be included in the record (which respondent could have cited and quoted from in a full formal brief on the merits once the writs had been granted, all in keeping with the purpose of the rules promulgated by this Court).

For example, the transcript of testimony has never been filed in **any** State Court in Louisiana and therefore respondent was not able to quote from and cite the page numbers of the testimony as transcribed, and **no official transcript** thereof has been furnished to the State of Louisiana. The transcript of testimony attached to petitioners' original petition for certiorari was obtained privately by petitioners and has never been available to respondent for citation and quotation.

Therefore, the member (or members) of this Honorable Court who examined or read any portion of that private unofficial transcript did not have the benefit of having their attention specifically called to the testimony of the Officers Meacham, Guthrie and Dent.

The testimony of those officers plainly shows: that an actual disturbance of the peace in reality took place; that every person who was ordered to move on and disperse, and who did so move on, obeyed the law (Art. 103.1) and were not arrested; and that petitioners were the only ones who refused to disperse and move on, thus violating Article 103.1 of the Louisiana Criminal Code. A careful examination of the testimony of those three officers would likewise show other pertinent factors which were never recognized or even touched on in this Court's opinion.

We respectfully submit that this Court is in error in holding that petitioners "were ordered to leave or be arrested" if by this statement, in the Court's opinion, this Court meant to infer that they were ordered to leave the premises. They were simply ordered to disperse and move on, and when they failed to do so they violated a disturbance of the peace statute.

This Court, we also respectfully submit, is in error in thinking that there even was (or is) a colored waiting room in existence at the Trailways Bus Depot in Shreveport, Louisiana. The testimony clearly showed that on the date of this offense there were two waiting rooms, one for interstate passengers and one for intrastate passengers, both of which were clearly marked.

Those waiting rooms were so designated in compliance with Louisiana law and the Louisiana statutes on that point had never been declared unconstitutional or void in any manner at the time of this offense. Whether such designation in compliance with Louisiana law was

or is unconstitutional, or void as being in conflict with any ruling of the Interstate Commerce Commission, was not an issue before the Court in this case, and this offense took place before the Interstate Commerce Commission ever attempted to promulgate any ruling in connection therewith.

That matter could and would be the subject of a separate civil lawsuit, but it was not and is not an issue in this criminal case of disturbing the peace for violating a "move on" statute.

This Court said in its opinion of June 4, 1962, "There was no evidence of violence. * * * petitioners were quiet, orderly, and polite."

That was never an issue in this case, and the State of Louisiana never contended in this prosecution that petitioners were not quiet and orderly, and, while it is true that the record "contains no evidence of violence" at the time and place these petitioners were arrested, it is also true that the record **will show** an "apprehension of, and potential for, violence."

Thus, the record **will show** that a tense situation existed at the Trailways Bus Depot on the day in question, with a substantial apprehension of, and a substantial potential for, violence within the meaning and intendment of the statute; and that order was maintained largely, if not entirely, by the very police action of which these petitioners now complain.

In this connection, we respectfully and strenuously submit that this Honorable Court failed to recognize the

real issue in this prosecution under Article 103.1. In all of the cases cited in the "response" which we filed at the request of this Court, **the Courts of last resort always found that the defendants were in a place where they had a right to be, but they failed to obey the police officers' order to disperse and move on and therefore** were guilty of violating a particular "move on" statute.

This is particularly true of *People v. Galpern*, 259 N. Y. 279, 181 N. E. 572, 83 A. L. R. 785. In that case, the defendant was merely standing on the sidewalk talking to some friends, in an orderly and inoffensive way, and he refused to move on when ordered to do so by the police officers. Other groups were standing nearby and were not ordered to move on. The defendant, Galpern, **did not use** any threatening, abusive or insulting language or behavior **or any violence.** The Court **assumed** that the defendant in good faith believed that the officer was arbitrary and also assumed that defendant's failure to obey was not intended as a defiance of the authority of the officer.

Yet, nevertheless, the Court of last resort held that **he had violated the New York "move on" statute** adopted in 1923, **which is almost word for word the same as Article 103.1** of the Louisiana Criminal Code, even though there was **not** such a crowd of people and such a potential for violence as **would be shown** by the record in the present case.

The same result is true of the facts in the following cases:

Feiner v. New York, 340 U. S. 315, 95 L. ed. 295, 71 S. Ct. 303;

People v. Thorpe, 198 Misc. 462, 101 N. Y. S. (2d) 986, 990;

People v. Feiner, 300 N. Y. 391, 91 N. E. (2d) 316;

People v. Hossock (1940), 6 Misc. (2d) 182, 23 N. Y. S. (2d) 520, cert. den. 312 U. S. 659, 85 L. ed. 1107, 61 S. Ct. 733;

People v. Friedman (1939), 6 Misc. (2d) 271, 14 N. Y. S. (2d) 389;

People v. Rosensweig, 12 N. Y. S. (2d) 795;

People v. Lo Vecchio, 185 Misc. 197, 56 N. Y. S. (2d) 354;

People v. Ward, 159 Misc. 328, 287 N. Y. S. 432, affmd. 272 N. Y. 615, 5 N. E. (2d) 359,

and many other cases cited on pages 33-39 of our original response.

In all of those cases there was no violence, and in each one the defendants were "quiet and orderly." Yet, it was specifically held that they failed to move on and therefore violated the particular "move on" statute involved.

Possibly some confusion might arise in the mind of some because this statute is called "disturbing the peace." It can very easily be called failure to "move on" because it is **not** necessary, as a prerequisite of a person being guilty of violating this statute, that such person himself actually and physically make or create a disturbance of

the peace. (In other words, **this is not a prosecution for disorderly conduct.**)

But, there was no confusion on the part of the United States Supreme Court in *Feiner v. New York*, *supra*, nor in *Tinsley v. City of Richmond*, 119 S. E. (2d) 488, being number 315 on the docket of this Honorable Court, October term, 1961, in which this Court said:

> "The Motion to Dismiss is granted and the appeal is dismissed for want of a substantial federal question."

The statute in *Tinsley v. Richmond* is much broader and allows the police officers to order even a single individual to move on whether any disturbance seems eminent or not. Indeed, the ordinance itself does not even set forth any standard or reason the officer must have for making such an order. The city ordinance in that case reads as follows:

> "Any person loitering or standing on the street, sidewalk or curb, shall move on or separate when required to do so by any member of the Police Bureau and shall cease to occupy such position on the street, sidewalk or curb."

We respectfully submit that the petitioners caused this Honorable Court to fall into the error of characterizing this prosecution as a segregation matter, which was **not** the basis of the prosecution by any stretch of the imagination insofar as the peace officers, the arresting officers and the prosecution officers are concerned.

(Therefore, we respectfully submit the six segregation-integration decisions cited in the June 4, 1962, *per curiam* in the next-to-last sentence have no relevancy in this prosecution for violation of the "move on" statute. This Louisiana "move on" statute, Art. 103.1, has absolutely nothing to do with segregation, either in its terminology or in its enforcement in this case. Many white people were ordered to move on, and they did move on. This statute applies to, and has been enforced as to, all persons similarly situated, regardless of racial, age, sex, color and all other distinctions.)

Petitioners were able to succeed in doing this by seizing upon a chance remark by the trial judge, which was completely *dictum* on his part. It was not a part of his ruling or a basis thereof, because he had already made his ruling denying the motion for a directed verdict before he uttered the *dictum*. We respectfully submit this Honorable Court has committed grave and serious error in holding that this *dictum* and passing remark "was sufficient evidence of guilt."

The actual ruling of the trial judge on the motion for a directed verdict was as follows:

> "The Motion for a Directed Verdict is overruled. I believe the State has shown a prima facie case."

That is far different from Your Honors' holding that the trial judge "held that the mere presence of the

negroes in the waiting room * * * was sufficient evidence of guilt." The trial Court simply did not say that there "was sufficient evidence of guilt."

This *dictum* remark was not made at all during the time the trial judge rendered his oral opinion finding the petitioners guilty at the conclusion of the entire trial, when he mentioned **some** of the "evidence of guilt" deemed sufficient to him, **after hearing the defense evidence.**

In conclusion, we submit that the following errors have been committed by this Honorable Court:

(1) In granting a writ of certiorari without respondent being given an opportunity to have a complete record made up (including an official transcript of testimony which could be cited and quoted) and then rendering a definitive decree reversing the judgments of the Louisiana Supreme Court and the First Judicial District Court of Louisiana, and without respondent being given the opportunity of filing a full formal brief on the merits and of presenting oral argument, all of which constituted an unanticipated and unprecedented deviation from the tenor and purpose of the rules of this Court as promulgated;

(2) In holding that there was such a room as a "colored waiting room" at the Trailways Bus Depot in Shreveport, Louisiana;

(3) In holding that the petitioners were "ordered to leave," if by that language this Court means

that they were ordered to leave the premises of the bus station;

(4) In indicating in its opinion that the real issue in this case was whether or not the petitioners were "violent" or "quiet, orderly and polite," that being a matter which was never before the Court (**and not even contemplated by the statute**);

(5) In holding that the *dictum* and passing remark of the trial judge was the **basis** of being "sufficient evidence of guilt" when such *dictum* remark was made, **not in finding them guilty, but** on the contrary, **after the trial Court had already overruled the motion for a directed verdict** and before the defense began its case;

(6) In holding that "the only evidence to support the charge" of violating Article 103.1 of the Louisiana Criminal Code was "that petitioners were violating a custom" relative to segregation when, as a matter of fact, **neither segregation nor integration was ever a basis of this prosecution**; and

(7) In indicating by the whole tenor of the *per curiam* opinion that for a person to be guilty of violating a "move on" statute he must himself have committed some violence or disorder, all of which is contrary to the jurisprudence of this Honorable Court, particularly as enunciated in *Feiner v. New York*, *supra*, and in *Tinsley v. City of Richmond*, Number 315, October term, 1961.

CONCLUSION.

We, therefore, respectfully submit rehearing should be granted herein and after argument thereon the judgment of the Louisiana Supreme Court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE.

I, M. E. Culligan, Assistant Attorney General of the State of Louisiana, a member of the Bar of the Supreme Court of the United States, hereby certify that a copy of this petition for rehearing has been deposited in the United States mail, postage prepaid, addressed to the

attorneys for the petitioners, namely, Jesse N. Stone, Jr., Esquire, Attorney at Law, Shreveport, La., and Carl Rachlin and Judith P. Vladeck, 280 Broadway, New York 7, New York.

M. E. CULLIGAN,
Assistant Attorney General, Member of the Bar of the Supreme Court of the United States.

CERTIFICATE OF COUNSEL.

I, M. E. Culligan, counsel for the above-named petitioner, do hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Rule 58, subdivision one and two, of the Rules of this Court.

Counsel for Petitioner.